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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

State of Arizona, *ex rel*. Kristin K. Mayes, Attorney General, *et al.*, Plaintiffs, v. Michael D. Lansky, L.L.C., dba Avid Telecom, *et al.*, Defendants.	Case No.: 4:23-cv-00233-TUC-CKJ **PLAINTIFFS' REPLY BRIEF ON DISCOVERY DISPUTES**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully submit their Reply Brief to Defendants' Responsive Brief on Discovery Disputes ("Defendants' Responsive Brief"). Below, Plaintiffs establish the significant prejudice Plaintiffs have suffered due to Defendants' tactics, Defendants' continuing and troubling pattern of misrepresenting communications to Plaintiffs and the Court, and Defendants' tacit admissions of the inadequacy of their discovery responses.

II. ARGUMENT

a. Plaintiffs have Suffered Significant Prejudice Due to Defendants' Obstructive Tactics

Defendants claim at several points in their Responsive Brief that Plaintiffs have suffered no prejudice due to Defendants' actions. This is not so. Under the Scheduling Order [Dkt. #102], discovery for this case closes in less than 60 days. Plaintiffs' discovery schedule and timeline has been negatively affected by Defendants in three major ways. First, and most egregiously, Plaintiffs are *still* without a *single* document production from Defendant Avid Telecom and only late today (9/15) received document production from Defendant Lansky[1] – six months after both Defendants were originally served with Plaintiffs' requests. Defense counsel has repeatedly assured Plaintiffs that document production is forthcoming and have not delivered on their promises, despite having served responses for Defendant Avid Telecom on July 22, 2025 and Defendant Lansky on May 2, 2025. S*ee, e.g.,* Declaration of Sarah Pelton, dated August 27, 2025 ("Pelton Decl. I") at ¶ 28, Ex. Y ("We expect to be in a position to move them [additional Reeves documents] to the portal later this week [week of August 12, 2025]."); Declaration of Sarah Pelton, dated September 15, 2025 ("Pelton Decl. III"), at ¶ 6, Ex. VV ("[W]e plan to upload another batch of (non-privileged) documents next week [week of August 29, 2025] following our review."); *infra* II. c. Instead of producing documents, defense counsel is instead preoccupied with issuing more discovery requests – issuing their Fourth Set of Requests for Production on Plaintiffs (713 total RFPs propounded by Defendants to date) and sending each of the 36 non-state claims states duplicative Requests for Production in the last week alone (652 RFPs to each).

Second, even with respect to lone documents Defendant Reeves did produce, the production was wholly deficient under Rule 34 because Reeves failed to label or organize the documents to correspond with Plaintiffs' specific document requests. *See* ESI Order at

[1] Plaintiffs have not yet reviewed the September 15, 2025 production, and thus, will not make any characterizations regarding the production in this Brief. Plaintiffs reserve their right to make characterizations about the production in the future.

Section (A)(3) [Dkt. #120]; Fed. R. Civ. P. 34(2)(E)(i). As a result of this violation, Plaintiffs have been prejudiced as they have no way of determining which documents – if any – are responsive to particular requests. Despite being placed on notice of this deficiency, Defendants have refused to remedy it and instead attempt to obscure their noncompliance with red herrings and arbitrary demands that Plaintiffs explain why Reeves's self-characterized "substantial" production is inadequate. The answer is simple: the production is inadequate because it does not satisfy the fundamental requirements of Rule 34. It is also abundantly clear to Plaintiffs that the production does not include any documents at all that are responsive to the majority of the Plaintiffs' Requests.

Finally, because of Defendants' purposeful delay and obstruction, Plaintiffs have no documents with which to depose, or even determine, key witnesses in the case. Defense counsel's deliberate delay in serving discovery responses – over three months past the original deadline – is not excusable neglect, particularly given Defendants were on notice of their untimeliness as early as late March. *See* Pelton Decl. I at ¶ 7, Ex. D. Moreover, the fact that after six months Plaintiffs have still not received a single document from Defendant Avid Telecom, and only today received documents from Defendant Lansky, in response to Plaintiffs' RFPs is not excusable neglect. With less than 60 days remaining before the close of discovery, Defendants' outright failure to participate in discovery has caused Plaintiffs severe prejudice and continues to stall resolution of this matter. Plaintiffs have no idea what is outstanding from Defendant Reeves from a discovery perspective because defense counsel refuses to state what documents are responsive to which Requests.

b. <u>Defendants Tacitly Concede their Untimely Discovery Responses Consist of Boilerplate Objections and Baseless Privilege Claims.</u>

Defendants' Responsive Brief fails to address many of the detailed deficiencies identified in Plaintiffs' Opening Brief. Specifically, Defendants do not explain why their definitional objections and claims of 'undue burden' should stand when those same objections were disregarded in response to other requests for which Defendants agreed to produce documents. Nor do Defendants provide any explanation as to why or how

producing communications, interactions, or account history logs with suppliers or customers would require them to "reach one or more legal conclusions." Defendants likewise fail to offer any support for their invocation of the law enforcement privilege, or any explanation as to how their communications with downstream providers or payments to those providers, could possibly be protected by the attorney-client privilege. Equally baseless – and ignored by Defendants in their Responsive Brief – is Defendants' assertion that documents concerning their own affirmative defenses are privileged.

These omissions confirm that Defendants' boilerplate objections and unsupported privilege assertions are without merit. Defendants' silence on these points amounts to a tacit admission of the inadequacy of their discovery responses. Their generalized objections are insufficient under the rules and are tantamount to no objection at all. *See Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999).

c. <u>Defendants' Misrepresentations and Procedural Deficiencies.</u>

Unlike Plaintiffs, in a recurring and troubling pattern, Defendants' Briefs offer little to no documentary evidence to support their stated positions. Plaintiffs have taken the liberty to chronicle Defendants' misrepresentations in the below table and correct each in turn.

Misrepresentations by Defendants	**Record Fact**
"Defendants missed discovery deadlines due to the unanticipated emergency hospitalization of Defendants' counsel managing day-to-day discovery issues." -Defendants' Responsive Brief at pg. 2	On July 11, 2025, Defense counsel Greg Taylor (purportedly the counsel "managing the day-to-day discovery") noted that he did not have access to the discovery responses in counsel Neil Ende's file to be able to resend the responses. The three identical Responses were sent to Plaintiffs on May 2, 2025. -Pelton Decl. III at ¶ 5, Ex. UU; Pelton Decl. I at Ex. I
"Defendants provided their first discovery responses shortly after counsel was released from the hospital." -Defendants' Responsive Brief at pg. 2	Defense counsel indicated to Plaintiffs that the hospitalization occurred around May 7, and he was discharged sometime prior to May 19, 2025. Defendants provided three

	identical discovery responses for Defendant Lansky on May 2, 2025. Defendants Reeves and Avid Telecom did not provide their first discovery responses until July 21, 2025, and July 22, 2025, respectively. -Pelton Decl. III at Exs. SS-TT, Pelton Decl. I at Exs. I-J, DD-EE
"When Plaintiffs brought the matter [the three identical discovery responses] to the attention of defense counsel, responses for Reeves and Lansky were already provided." -Defendants' Responsive Brief at pg. 2	Plaintiffs brought this issue to defense counsel on four separate occasions starting May 7, 2025. Defense counsel did not respond to these concerns until July 11, 2025, never provided the responses they purportedly intended to send on May 2 and did not provide separate responses for Defendants Reeves and Avid Telecom until July 21, 2025, and July 22, 2025, respectively, which were then identified as supplemental responses. -Pelton Decl. I at Exs. K-M, V, DD-EE
"Defendants expect to produce an additional tranche of documents this week [week of September 8, 2025]." -Defendants' Responsive Brief at pg. 5	Defendants did not produce any documents within the week of September 8, 2025. -Pelton Decl. III at ¶ 7
"Defendants have not withheld any documents on the basis of privilege. This fact has been communicated to Plaintiffs." -Defendants' Responsive Brief at pg. 4	This is the first Plaintiffs have heard of this statement and it is contradicted by Defendants' own brief on page 4, where they refuse to provide a privilege log until potentially responsive documents are identified - "Defendants are prepared to produce a privilege log in the normal course and upon meaningful identification of potentially responsive documents." -Defendants' Responsive Brief at pg. 4
"Unlike Defendants who have said no documents are being withheld, Plaintiffs to this date have failed and refused to so represent." -Defendants' Responsive Brief at pg. 4, FN 3	Plaintiffs explained they did not withhold documents on the basis of their objections in their written responses and in Plaintiffs' response to Defendants' Meet and Confer letter.

	-Declaration of Sarah Pelton, dated September 8, 2025 ("Pelton Decl. II") at Ex. NN; Ex. B, Dkt. 116-2.
"[N]or have [Defendants] refused to comply with any other discovery request." -Defendants' Responsive Brief at pg. 1	Defendants have refused to comply with Plaintiffs' discovery requests by not producing documents for Defendant Avid Telecom, delaying production from Defendant Lansky, and significantly incomplete production from Defendant Reeves which also lacks any labeling or an index identifying the Requests to which the 320 produced documents are responsive. -Pelton Decl. III at ¶ 7.

Additionally, defense counsel has not signed any of the briefs or corrected their initial Declaration, a violation of Federal Rule 11(a), which requires every paper filed with the Court to be signed by at least one attorney of record in the attorney's name. *See* Fed. R. Civ. P. 11(a). To date, defense counsel has not corrected the procedural deficiencies in either of their submitted briefs.

d. <u>Defendants Have Demonstrated a Commitment to Noncompliance and Deficiency.</u>

Contrary to Defendants' characterization, they are far from showing a demonstrated commitment to compliance in discovery. In fact, Defendants' briefing provides very little, if any, accompanying support for their assertions. The record before the Court is replete with examples from Plaintiffs showing Defendants' flagrant abuse of their discovery obligations and persistent obstructive tactics have caused significant delays in this case.[2] Defendants provided untimely and boilerplate responses to Plaintiffs' discovery requests, served late objections replete with issues, and now attempt to mislead the Plaintiffs and the Court by stating they have complied with their discovery responses.

Tellingly, in their Briefs, Defendants cite to no caselaw or evidentiary record for their claims. In just one example, Defendants did not cite any of the claimed "federal precedent and local practice" that support their position that their boilerplate objections are

[2] *See* delays caused by Defendants described in Plaintiffs' Motion for Entry of ESI Protocol, Dkt. 116.

sufficient. In fact, in previous briefs, Plaintiffs showed the opposite is true. *See Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *Burns v. Imagine Films Entertainment, Inc.*, 164 F.R.D. 589, 592–93 (W.D.N.Y. 1996) (general objections that discovery request was unduly burdensome were not sufficiently specific to allow court to ascertain objectionable character of discovery request and were improper); *Sabouri v. Ohio Bureau of Emp. Services*, 2:97-CV-715, 2000 WL 1620915, at *5 (S.D. Ohio 2000) ("Fed.R.Civ.P. 34 requires production of a document that is in the 'possession, custody or control' of a party; the fact that the document may also be available from another source is irrelevant."); *Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995) ("[A]ctual possession of the requested documents is not required. A party may be ordered to produce a document in the possession of a non-party entity if that party has a legal right to obtain the document or has control over the entity who is in possession of the document.") (internal quotations and citations omitted).

III. CONCLUSION

For the reasons set out in Plaintiffs' discovery briefings, Plaintiffs respectfully request judicial relief to overcome Defendants' ongoing obstruction of the discovery process, including leave to file motions to compel and appointment of a magistrate to ensure Defendants' compliance with their discovery obligations moving forward.

RESPECTFULLY SUBMITTED this 15th day of September 2025.

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CERTIFICATE OF SERVICE

Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 5(a), I hereby certify that on September 15, 2025, a true and correct copy of the above and foregoing document has been served using the CM/ECF system to all counsel and parties of record.

/s/ Belen O. Miranda